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Michael A. Greenberg

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Frank C. Nicholas
CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, IL 60201

EXAMINER

FELTEN, DANIEL S

ART UNIT

PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/922,240
Filing Date: August 03, 2001
Appellant(s): GREENBERG ET AL.

MAILED

JUN 21 2006

GROUP 3600

Darrin Wesley Harris
(Reg. No. 40,636)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 04, 2006 appealing from the Office
action mailed October 04, 2005

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Walker et (US 5,794, 207); and Pool (US 6,460, 020)

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (US 5,794,207) and Pool (US 6,460,020)

Re claims 1 -3:

Walker discloses a method for providing a commodity offer price to a buyer, comprising: receiving an offer to sell a commodity according to a predetermined contract, at a specified price (see Walker, Abstract, col. 16, 11. 12-50), Walker fails to disclose adjusting the specified price based on shipping costs; and transferring the adjusted price to the buyer over a computer network for displaying by a remote client, as in claim 2, adding the shipping costs to the specified prior to product the adjusted price, or as in claim 3, receiving a shipping destination from the buyer, receiving a shipping origin from the seller, computing the shipping costs as a function of the distance between of the shipping destination and shipping origin, and adding the shipping costs to the specified price to produce the adjusted price.

Pool discloses adjusting the specified prior based on shipping costs, and transferring the adjusted prior to the buyer over a computer network for displaying by a remote client, as in claim 2, adding the shipping costs to the specified price to produce the adjusted price, or as in claim 3, receiving a shipping destination from the buyer, receiving a shipping origin from the seller, computing the shipping costs as a function of the distance between of the shipping destination and shipping origin, and adding the shipping costs to the specified price to produce the adjusted price (see Pool Abstract, col. 3, 11. 5-1 0, 38-52 to col. 4, 11. 1 5-, col. 8, 11. 65 to co. 9, 11. 5).

1. Claims 4-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neil et al (US 6,219,653).

O'Neil discloses, as in claim 4, a method for providing a bid to a seller, comprising: receiving a bid to purchase a commodity according to a predetermined contract' (see O'Neil, Abstract), discounting (adjusting the price) the bid based on shipping costs (see O'Neil col. 14, 11. 19-58 esp. 11. 52-58), and transferring the discounted bid to the seller over a computer network for displaying by a remote terminal (see O'Neil, fig. 3col. 15, 11. 41+) as in claim 5, subtracting the shipping costs from the bid to produce the discounted bid (see O'Neil col. 14, 11. 19-58 esp. 11. 52-58).

O'Neil discloses, as in claim 6, receiving a shipping destination from the buyer, receiving a shipping origin from the seller, determining the shipping costs based on the shipping destination and shipping origin (see O'Neil col. 14, 11. 19-58 esp. 11. 52-58). O'Neil discloses negotiations and counter offers that vary the terms of the bid and price adjustment (see col. 14, 11. 30+), but fails to disclose subtracting the shipping costs from the bid to produce the

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discounted bid. Since O'Neil appreciate the shipping costs associated with the delivery of the commodity, it would have been obvious for an artisan of ordinary skill at the time the invention would have sought to negotiate and adjust the bid/price in accordance with shipping/handling costs as one of the terms of the original bid to provide a sense of fairness between the buyer and the seller. Furthermore, O'Neil would have sought to discount the bid price based upon the shipping costs as one of the terms within the negotiation process, in order to place the on us on the buyer (instead of the seller) to pay the shipping costs and to provide an added incentive to the buyer to buy the particular item being sold. Thus such a modification would have been an obvious expedient well within the ordinary skill in the art.

:(10) Response to Argument

--Regarding claims 1-3: Both Walker and Pool disclose systems that are used for purchasing goods and services over networks, however, Walker fails to disclose adjusting the price based upon shipping costs. Pool discloses this feature (see Pool, Abstract, col. 3, 11. 5-10 & 38-52 to col. 4 11. 15; and col. 8, 11. 65 to col. 9, 11. 5). It would be obvious for an artisan of ordinary skill at the time of the invention of Walker to recognize that the shipment and/or delivery of goods is a service which (often) incurs a cost to the receiver. Since Walker discloses a cash on delivery method of payment (as well as others) for goods, it would have been an obvious extension of the delivery method of Walker to employ the teachings of Pool in Walker to adjust the price to include shipping and/or delivery costs to provide the buyer with the total cost of the item. Thus such a modification would allow the buyer to consider the true cost of the

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transaction. Thus the system would incur less false transactions and therefore have been an obvious expedient well within the ordinary skill in the art.

--Regarding claim 4-30: The applicant has asserted that there must be some suggestion or motivation to modify O'Neil, either in the references themselves or in the knowledge of one of ordinary skill in the art and that O'Neil teaches away from modification of O'Neil. It appears that the applicant has applied a more stringent standard to the reference than to the limitations of the claim. This is a reversal of their appropriate roles as the reference is used as a whole in light of the level of skill in the art. In addition it seems that the applicant fails recognize the level of skill in the art. In particular the omission of matching offers and bids in the previous office action was because of the fact that one of ordinary skill in the art would recognize that matching inherently occurs between a buyer and a seller when an agreement is reached in negotiations over the terms of the agreement. In the case of O'Neil, both the buyer client and the seller client generate freight calculation data to be used by the trading platform to calculate delivery costs to facilitate realistic and meaningful negotiations and agreements between buyers and sellers regarding the delivery of a load (see O'Neil, column 4, lines 15-29; and col. 14, lines 19-48). Thus it would be evident that an artisan of ordinary skill in the art would not need be reminded of such details because an artisan of an ordinary skill level in view of O'Neil would have taken such a detail for granted being well recognized, commonly understood as well as a fully employed standard within the level of ordinary skill in the art.

Furthermore as to applicant's assertion that O'Neil teaches away from the instant application by determining delivery cost after the sale has been transacted instead of before, it is submitted to the applicant that O'Neil does read on applicant's invention. The applicant is asked

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to re-read the following passages in O'Neil (see col. 4, lines 15-29; and col. 14, lines 19-48) in regards to the aforementioned argument. It should be noted from that the market order building process is a process that occurs before a sales transaction or actual trade between bidders and sellers. In another passage, O'Neil indicates that the delivery costs are predetermined (via the freight calculation data) by the user before the sales transaction takes place (see col. 26, lines 22-39) this passage suggests that the delivery costs are directly related (and equivalent) to the freight calculation data which is chosen as part of the delivery information. The freight calculation data is selected by the buyer client before the actual sales transaction is performed. It is suggested by the Examiner that before the sales transaction takes place, the buyer client has some level of understanding of what the delivery cost will be based upon attributes related to the load configuration information found as a part of the stipulations provided within the market order. An artisan of ordinary skill in the art would have recognized the fact that the freight calculation data provides price related data connected to the delivery costs of the freight prior to a sales transaction. Thus one of ordinary skill in the art at the time of invention would recognize the use the freight calculation data (as delivery costs) in to adjust the overall price of the item.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ex. Daniel Felten



Conferees:

Vincent Millin



Hyung Sough

